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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	
	:	<u>COMPLAINT</u>
- against -	:	
	:	Civil Action No.
THE NEW YORK CITY TRANSIT	:	04 - 00732 (LAP)
AUTHORITY,	:	
	:	
Defendant.	:	
	:	
-----X	:	

Plaintiff, the UNITED STATES OF AMERICA, by its attorney DAVID N. KELLEY, United States Attorney for the Southern District of New York, on behalf of the United States Environmental Protection Agency ("EPA"), alleges as follows:

NATURE OF THE ACTION

1. This is a civil action for injunctive relief and civil penalties under the Stratospheric Ozone Protection regulations, 40 C.F.R. Part 82, Subpart F, promulgated by EPA pursuant to Section 608 of the Clean Air Act, 42 U.S.C. § 7671g. This action arises from defendant's repeated violations of the regulations as a result of its failure to repair air conditioning

units on subway cars to prevent leakage of ozone-destroying chlorofluorocarbons ("CFCs"). Defendant also failed to maintain records regarding the servicing of air conditioning units, as required by law.

#### JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and § 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b). Notice of commencement of this action has been provided to the State of New York as required by U.S.C. § 7413(b).

3. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1395(a), and § 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b), because violations alleged herein occurred in the Southern District of New York.

#### THE DEFENDANT

4. The defendant New York City Transit Authority ("TA") is a public corporation that owns and operates an extensive subway system, consisting of subway lines, cars, and stations providing mass transportation to the public in New York City. Its principal place of business is 370 Jay Street, Brooklyn, New York 11201.

5. The TA is responsible for the custody, control, and repair of the subway cars that it owns.

## STATUTORY AND REGULATORY BACKGROUND

6. Section 608 of the Clean Air Act, 42 U.S.C. § 7671g, directs EPA to promulgate regulations regarding the use and disposal of ozone-depleting substances such as CFCs during the service, repair, or disposal of appliances.

7. The purpose of EPA's regulations, codified at 40 C.F.R. Part 82, Subpart F, is to reduce emissions of ozone-depleting refrigerants "to the lowest achievable level during the service, maintenance, repair, and disposal of appliances." 40 C.F.R. § 82.150(a).

8. "Appliance" is defined as "any device which contains and uses a class I or class II substance as a refrigerant and which is used for household or commercial purposes, including any air conditioner." 40 C.F.R. § 82.152.

9. 40 C.F.R. § 82.156(i)(5) requires that owners or operators of appliances normally containing more than 50 pounds of refrigerant must repair leaks if an appliance is leaking at a rate such that the loss of refrigerant will exceed 15 percent of the total charge during a 12-month period. The repairs must bring the annual leak rate to below 15 percent. The regulations require that such repairs must be performed within 30 days after the date the leak was, or should have been, discovered. 40 C.F.R. § 82.156(i)(9).

10. The regulations also require that owners and operators of appliances normally containing more than 50 pounds

of refrigerant must keep servicing records documenting the date and type of service, as well as the quantity of refrigerant added. 40 C.F.R. § 82.166(k).

11. Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b), authorizes EPA's Administrator to "commence a civil action for a permanent or temporary injunction," and for recovery of a "civil penalty of not more than \$25,000 per day for each violation," against any person who violates any requirement or prohibition under Subchapter VI of the Act, including § 7671g, and any rule promulgated, issued or approved thereunder. In accordance with the provisions of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996, EPA issued regulations entitled "Adjustment of Civil Monetary Penalties for Inflation," 40 C.F.R. Part 19, which raised the statutory maximum penalty for violations of the Clean Air Act occurring after January 30, 1997, to \$27,500 per day for each violation.

12. Pursuant to § 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e), the term "person" includes, among other entities, an individual, corporation, partnership, association, state and municipality.

### FACTUAL ALLEGATIONS

13. The TA has been and is a person within the meaning of § 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e).

14. The TA is the owner and/or operator of subway cars, which have air conditioning units that use class I or class II substances as a refrigerant. The air conditioning units on such subway cars are "appliances" ("Appliances") within the meaning of 40 C.F.R. § 82.156(i)(5). Some of these Appliances contained more than 50 pounds of a class I or class II substance as a refrigerant. Thus, the TA is the "owner or operator of appliances normally containing more than 50 pounds of refrigerant" within the meaning of 40 C.F.R. § 82.156(b) and 82.156(i)(5).

15. The TA performed maintenance, service, and repair work on the Appliances at, among other places, five maintenance shops ("Maintenance Shops") located in New York: the Corona Maintenance Shop, Jerome Maintenance Shop, Pelham Maintenance Shop, 180<sup>th</sup> Street-239<sup>th</sup> Street Maintenance Shop, and 240<sup>th</sup> Street Maintenance Shop.

16. On numerous occasions since May 1998, the TA failed to repair Appliances that contained more than 50 pounds of refrigerant and were leaking at an annualized rate in excess of 15% within 30 days after the leak was or should have been discovered.

17. On numerous occasions since May 1998, the TA

failed to keep servicing records documenting the quantity of refrigerant added to the Appliances.

**FIRST CLAIM FOR RELIEF**

18. Plaintiff repeats and realleges the allegations of paragraphs 1 through 17 of the complaint as if fully set forth herein.

19. The TA failed to repair leaking Appliances within 30 days of the date the leaks were discovered or should have been discovered, in violation of 40 C.F.R. § 82.156(i)(5) and (i)(9).

20. Upon information and belief, the TA will continue to violate Clean Air Act and the Stratospheric Ozone Protection regulations with regard to the foregoing repair requirements, unless enjoined by the order of this Court.

**SECOND CLAIM FOR RELIEF**

21. Plaintiff repeats and realleges the allegations of paragraphs 1 through 20 of the complaint as if fully set forth herein.

22. The TA failed to keep servicing records documenting the quantity of refrigerant added to Appliances, in violation of 40 C.F.R. § 82.166(k).

23. Upon information and belief, the TA will continue to violate Clean Air Act and the Stratospheric Ozone Protection regulations with regard to the foregoing requirement, unless enjoined by the order of this Court.

**PRAYER FOR RELIEF**

WHEREFORE, plaintiff respectfully prays that this Court

a. Enjoin defendant to comply with all applicable requirements of the Clean Air Act and the Stratospheric Ozone Protection regulations;

b. With respect to each violation of the Clean Air Act and the Stratospheric Ozone Protection regulations at each Maintenance Shop, order the defendant to pay a civil penalty in an amount up to \$27,500 for each day of violation;

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c. Award plaintiff its cost and disbursements in this action; and

d. Award such other and further relief as this Court deems appropriate.

Dated: New York, New York  
January 30, 2004

THOMAS L. SANSONETTI  
Assistant Attorney General  
U.S. Department of Justice  
Environment and Natural Resources  
Division

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